HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19527 of 2006

Dated:20.09.2006

Between:

M/s.Columbia Petro Chem.Pvt.Ltd.

…Petitioner

and

M/s.Transmission Corporation of A.P.Ltd., and another.

…Respondent

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.19527 of 2006

ORDER:

The petitioner is a Company having its registered Office at Mumbai and a branch Office or front office at Hyderabad. The petitioner Company is engaged in the business of manufacturing and supplying of petro chemicals and electrical transformer oil. Pursuant to tender specification No.CTO-02/2005 issued by the first respondent herein for supply of 1,500 K.L High Grade Transformer Oil as per ISS 335/1993 (latest version), the petitioner submitted tender quoting the Firm rate of Rs.28,500/- per K.L. At the time of submitting its bid the Company also paid a sum of Rs.10,48,530/- as a bid security. Be that as it is, by a letter, dated 08.08.2005, the second respondent i.e., the Chief Engineer of the first respondent informed the petitioner that the Company's tender dated 16.05.2005 has been accepted at the rates quoted by it. As per the delivery schedule, the petitioner is required to commence the supplies within two months with 300 K.L and complete the supplies in the succeeding eight months at the rate of 300 K.L monthly. After receiving the intimation of acceptance of the offer, the petitioner sent a communication dated 12.08.2005 expressing their inability to supply 1,500 K.L of transformer oil as per the schedule prescribed by the first respondent and also requested to withdraw the intimation of acceptance of offer. In response thereto, the first respondent again sent a letter on 24.08.2005 informing that the bid/tender supplied by the petitioner is valid up to 19.08.2005 and that the petitioner cannot change the rates quoted or any conditions of the offer during the validity period of ninety days as accepted by the

Company in the tender. The petitioner was also informed that as per Clause No.20.11 of the bid conditions/tender specification the bid security will be forfeited if there is revision or deviation in quoted prices. By the same letter, the bid security was forfeited and the petitioner was blacklisted. The petitioner thereafter got issued a legal notice through it's lawyers M/s.Divya Sha Associates, Advocates and Solicitors, Mumbai, seeking refund of bid security amount of Rs.10,48,530/- with reasonable rate of interest. By impugned order dated 10.05.2006, the second respondent sent a reply to the petitioner's Advocates referring to Clause 20.4 of the tender specifications. Assailing the said letter and further seeking a declaration that blacklisting of the petitioner is illegal and void, the present Writ Petition is filed.

Learned Counsel for the petitioner strenuously contends that due to steep escalation of the prices of petro products in the international market, it has become highly impossible for the petitioner to supply the entire quantity of 1,500/- K.L of transformer oil within a period of eight months. Even before the first respondent accepted the offer made by the petitioner by letter dated 08.08.2005 of the second respondent, the petitioner sent a letter on 05.08.2005 and though the same was received by the first respondent, the same was not considered while stipulating the delivery schedule in the acceptance letter. This according to the learned Counsel is arbitrary and illegal. Secondly, he submits that even if there was a breach on the part of the petitioner, withholding the entire amount of bid security is unreasonable.

Learned Counsel placed reliance on the decision of this Court in **Krishnaveni Constructions v. The Executive Engineer, Panchayat Raj, Darsi**[1], and the decision of the Supreme Court in **National Highway Authority of India v. M/s.Ganga Enterprises**[2]**.**

There is no denial that the petitioner's bid was accepted and the petitioner was required to supply the transformer oil as per the delivery schedules. When the petitioner initially accepted the bid specifications and filed tenders, this was very much known to all the bidders. The subsequent price escalation of petro products can never be any ground for a bidder to seek revision of the conditions. Such an eventuality was also taken care by Clause No.20.11 of tender specification, which categorically prohibited any revision or deviation during the validity period. Admittedly, the petitioner's offer was valid for a period ninety days as accepted by the petitioner, and therefore, having sent the communications on 05.08.2005 and 12.08.2005, the petitioner certainly committed breach of Clause 20.11. In such an event, there is no denial that Clause 20.4 is attracted. The said clause

reads as under.

Clause 20.4:

(a) If a Bidder:

i. Withdraws its bid or alters its prices during the period of bid validity specified by the Bidder on the Bid Form, or

ii. Does not accept the correction of errors pursuant to clause No.30.2: or

iii. Offers post Bid rebates, revisions or deviations in quoted prices and/or conditions or any such offers which will give a benefit to the Bidder over others will not only be rejected outright but the original Bid itself will get disqualified on this account and the Bidder's BID SECURITY will be forfeited.

(b) In the case of a successful Bidder, if the Bidder fails:

i. To sign the contract in accordance with Clause No.38.

ii. To furnish performance security in accordance with Clause No.39.

The action of the respondents, therefore, is strictly in accordance with the binding terms and conditions of the tender specifications. In **Krishnaveni Constructions v. The Executive Engineer, Panchayat Raj, Darsi**'s case (supra), the petitioner did not accept to keep the offer open and indeed there was no material before this Court to come to such conclusion. Therefore, this Court has drawn an inference that in the absence of any promise to keep the offer open till the stipulated period, resiling from the offer is valid, and in such an event forfeiting earnest money deposit is unsustainable. In **National Highway Authority of India v. M/s.Ganga Enterprises**'s case (supra), the Supreme Court ruled out that if the tender is withdrawn before acceptance, forfeiture of the bid security would be unreasonable. In this case the petitioner sent a letter seeking revision of the conditions of the tender, but not a letter withdrawing from the offer. Therefore, this Court does not find any infirmity in the respondents forfeiting the amount paid by the petitioner as bid security. Even while passing order of blacklisting the petitioner, the petitioner was informed about the conditions of the tender, which include such blacklisting.

The Writ Petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

20.09.2006

vs

[1] AIR 1995 AP362

[2] AIR 2003 SC 3823